

TAXATION: Even the cemetery association later sells off part of land said land tax exempt during time held by association for cemetery purposes.

January 2, 1941

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Hon. Martin L. Neaf
Assessor, St. Louis County
Clayton, Missouri

Dear Sir:

This will acknowledge receipt of your letter of December 13, 1940, requesting our opinion on whether certain property formally owned by the Memorial Park Cemetery Association was subject to real estate tax during said time.

The facts are, as we understand them, that the Association has been in existence about twenty years and its original cemetery tract comprised about 400 acres of land. A number of years ago 200 acres of this tract was abandoned so far as holding it for use for cemetery purposes is concerned. Since the beginning the remaining 200 acres has been dedicated for cemetery purposes. Drives and roadways were laid out therein and the plat we have shows they extend in the portion in question. From time to time throughout the years the tract was landscaped as demands necessitated. During this time some 20,000 lots have been sold and over 5,000 bodies have been buried in various parts of the 200 tract. A portion of this tract, consisting of 23 acres off the east side, was never landscaped, but was included in the original dedication and over 30 burial lots were sold therein. In 1939, the Association repurchased the lots sold in this 23 acre tract, vacated the dedication and sold the whole of said 23 acre tract to private enterprise for development as a residential subdivision.

In our opinion to you under date of June 6, 1940, we had occasion to consider a similar question in connection with the caretakers plot and house in the Salem Cemetery. We cited the case of National Cemetery Association

v. Benson 129 S. W. (2d) 842 (Mo. Sup.) where it was said
l. c. 844:

"We must determine therefore what is included under the word 'cemetery.' A cemetery has been defined to be: 'A place or ground set apart for the burial of the dead, orig. a Roman catacomb, later the consecrated yard of a church so used, now any burial ground, esp. on a large scale; a graveyard; a necropolis.' (Webster's New International Dictionary, 2d Ed.) 'A cemetery is a place set apart, either by municipal authority or private enterprise, for the interment of the dead.' (10 Amer. Juris., Cemeteries, Sec. 2, p. 487.) To invoke the exemption the property must have been 'set apart' for the burial of the dead."

The court held the property taxable in that case saying l. c. 845:

"We can find nothing in the record to show that the land assessed here has either been used as a cemetery or that active measures have been taken toward preparing it for cemetery purposes."

We said in the opinion heretofore mentioned
page 5:

"Note also that the Supreme Court in the Benson case * * * stated with respect to the failure of proof, that no 'active measures have been taken toward preparing it for cemetery purposes.' We take it from this statement, that had the evidence shown that steps had been taken toward preparing the unplatted 65 acres for cemetery purposes the conclusion of the Court would have been the reverse of what it was.

"From this we infer the rule to be that land prepared for cemetery purposes, although no burials have been made therein, is tax exempt."

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Thus it appears that the tax exemption requires cemetery lands to be "set apart" for the burial of the dead, and steps be taken to prepare the land for that purpose. No burials are required.

We think the facts in this situation show that these requirements were met, throughout the years the 23 acre tract was owned by the Association. The land was set apart (dedicated) for cemetery purposes and steps (the platting of lots, laying out of drives and roadways, and selling lots therein) were taken to prepare the tract for such purpose.

Therefore, it is our opinion that the land in question was not subject to taxation during the time it was held by the Memorial Cemetery Park Association for cemetery purposes.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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